

APPELLATE CRIMINAL

Before Tek Chand, J.

OM PARKASH,—*Convict-Appellant.*

versus

THE STATE,—*Respondent.*

Criminal Appeal No. 515 of 1957

Indian Penal Code (Act XLV of 1860)—Sections 341 and 342—Wrongful confinement—What amounts to—Actual physical obstruction—Whether necessary—Section 307—Attempt to murder—Essentials of—Husband omitting to provide food and medical aid to his wife who is entirely dependent on him—Whether guilty of offence under section 307—Duty of husband towards his wife stated—Attempt to commit an offence—When criminal.

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Held, that to support a charge of wrongful confinement proof of actual physical obstruction is not essential. It must be proved in each case, that there was at least such an impression produced in the mind of the person confined as to lead him, reasonably to believe, that he was not free to depart, and that he would be forthwith restrained, if he attempted to do so. It is sufficient for purposes of commission of offence of wrongful confinement if the person confined knows the harmful consequences of disobedience in

case he tries to escape. In such a case a moral force can be as effective as physical coercion. What is of importance in such cases is the reasonable apprehension of force, rather than its actual use. Any effective restraint on the right of freedom whether caused by threats or by actual physical force is sufficient for purposes of commission of an offence. The coercion of the mind can, in certain circumstances, be as effective as coercion of the body, in order to bring the conduct of the wrong-doer within the ambit of section 341 or of section 342, Indian Penal Code. Such a restraint may arise out of words, acts, gestures or the like sufficient to induce a reasonable apprehension that failure to submit will result in the use of force. It is not necessary to constitute the offence under section 341 or under section 342, Indian Penal Code, that the person to be deprived of his liberty, should be touched or assaulted or actually arrested or confined within walls, the offence may be committed by words alone or by acts alone, or by both, or by merely operating on the will or by personal violence or both. A person can be deprived of his liberty of locomotion as much by the exercise of force as by the express or implied threat of it.

Held, that a husband is liable to feed and shelter his wife who is incapable of self-help to the same extent as the parent of a helpless child exclusively depending on him. The claim of a wife on her husband for sustenance and medical relief does not rest merely on benevolent morality or on humanity or mercy. A wife does not ask for food and raiment *ad misericordiam*, but on the basis of an obligation which is not placed by morality alone but which is also placed by law.

Held, that where the wife is in a helpless state and unable to appeal elsewhere for aid, the husband who has the means to provide necessaries for existence, when deliberately withholding them, commits murder and is guilty of murder. The criminal liability of a husband for causing the death of a wife in such a helpless condition, by withholding necessaries of life from her, is on the same footing, as that of a parent towards an infant or of a jailor towards a prisoner or of a person in charge of a lunatic asylum towards its inmate. Similar liability is cast on guardians of helpless persons including nurses attending the sick. In short where there is a legal duty, law imposes a liability. The liability of such persons is, however, conditional on their capacity, means and liability to perform the legal duty.

The criminality which attaches to omission to provide food also applies to failure to provide clothing, shelter, medical attention, treatment and to other necessities of life. But a refusal to perform acts of mere charity or mercy, not coupled with a legal duty, does not entail legal punishment even if death ensues from such refusal or neglect.

Held, that an attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof. For purposes of criminal liability, it is sufficient, if the attempt had gone so far, that the crime would have been completed, but for extraneous intervention which frustrated its consummation.

Appeal from the order of Shri P.P.R. Sawhny, Additional Sessions Judge, Ludhiana, dated the 18th June, 1957, convicting the appellant.

HAR PARSHAD, for Appellant.

K. N. TEWARI, for Advocate-General, for Respondent.

JUDGMENT

TEK CHAND J.—Om Parkash, a clerk in the office of the District Inspector of Schools, Ludhiana, has instituted an appeal in this Court from his conviction under section 307, Indian Penal Code, and the sentence of three years' rigorous imprisonment passed by the Additional Sessions Judge, Ludhiana. The police had challaned besides Om Parkash, his mother Dwarki Devi, and his brothers Romesh Chander and Surinder. The Committing Magistrate discharged Romesh Chander and Surinder, and committed to the Court of Session, Om Parkash and Dwarki Devi for trial under section 307 read with section 34, and under section 342, Indian Penal Code. Dwarki Devi has been acquitted. The Sessions Judge also found that the charge under section 342, Indian Penal Code, was not proved against Om Parkash.

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The offence under section 307, Indian Penal Code, is alleged to have been committed under circumstances which in some ways are unusual.

The prosecution story as stated by P.W. 7 Shrimati Bimla, wife of the accused, is that she was married to Om Parkash on 5th of October, 1951, when she was 20 years old. She lived with him at Ludhiana for about a year and the marital relations, to start with, were happy for a short while, but soon after there was estrangement. This led her brother to take her away to Ambala where she stayed with him for one year. This was in 1953. On being assured by the maternal uncle of the accused that she would not be maltreated, she returned to her husband. But the domestic felicity did not last for long and bickerings and quarrels started again. At the time of marriage it was said that she was in good health, but later on owing to maltreatment and deliberate under-nourishment her health deteriorated. It was also alleged, that she used to be often beaten by the accused and also by his mother Dwarki Devi. It is then said that on one occasion, her mother-in-law called her upstairs and when she reached the topmost step, she was asked to stop; and then Dwarki pushed her and Bimla went tumbling down. She sustained many injuries, as she struck against the edges of the steps. According to Bimla Devi, her mother-in-law and her husband expressed their annoyance at her not having brought any cash in the dowry, and the mother-in-law used to say that if Bimla were to die, she would marry her son in a rich family. Bimla also said that in 1956, she was deliberately starved and was not allowed to leave the house and sometimes a morsel or so used to be thrown to her "as alms are given to a beggar". She was not allowed to contact anybody outside the house. She stated

that she was denied food for days together and water was given to her to drink in the same utensil which was kept for ablution when going to the latrine. She also complained that after being kept without food for some days she used to be given gram husk mixed in water after 5 or 6 days. In the month of April, 1956, she managed to go out of the house but she was caught hold of in the bazar by Romesh and Surinder, brothers of her husband, she was forcibly dragged inside the house, and severely beaten. From that day, she said that she was kept in a room which used to be locked from outside.

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On 5th of June, 1956, which was an Ekadshi day, her mother-in-law Dwarki Devi, left the house and went to the temple. Her husband was in the office. Finding her room unlocked, she availed herself of this opportunity and went out of the house and managed to reach the Civil Hospital, Ludhiana, where she met Lady Doctor Mrs. Kumar, P.W. 2 and told her as to how she had suffered at the hands of her husband and his people and how she had been deliberately starved, under-nourished and kept in confinement during the last two months. Later in the day, on learning that she had gone to the hospital, Om Parkash and his mother went there and insisted on taking her home but the Lady Doctor Mrs. Kumar would not let her to be taken back. Some women social workers coming to know of her plight, took interest in her and sent information by telegram to her brother Madan Mohan who was then in service in Srinagar, Kashmir. He reached Ludhiana and on learning from her of her sufferings during the preceding months, he made a report, Exhibit P. N., to the Station House Officer, Division No. 2, Ludhiana, on 16th of June, 1956. It was stated in Exhibit, P. N. that his sister Bimla

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was lying on death bed and her condition was very serious and that was intentionally caused by her husband, and his mother, brothers and sister, and that she was kept locked in a room for a long time and used to be frequently beaten by them.

Exhibit P.N./1 is the formal first information report which was registered by P.W. 14 Nand Lal, Assistant Sub-Inspector of Police. On 16th June, 1956, P.W. 1 Dr. Miss Dalbir Dhillon on duty sent a note to S.H.O. Division No. 2 at 9-15 p.m. saying "My patient Bimla Devi is actually ill. She may collapse any moment". On receipt of this note P.W. 14 Assistant Sub-Inspector arranged for a Magistrate to record her statement after Dr. Dhillon had certified that Bimla Devi was in a fit condition to make the statement. P.W. 9 Shri Sehgal Magistrate recorded her statement which is Exhibit P.K. and had it thumb-marked by her. Along with the statement he sent the following note:—

"Bimla Devi (wife of Om Parkash) whose dying declaration is attached herewith tells me that she has studied up to 6th class and can both read and write but she is too weak at the moment to put her signatures. Hence instead I have taken her left hand thumb-impression

Blood transfusion is taking place through the right fore-arm and consequently the right hand of the patient is not free. It is not possible to get the thumb-impression of the right hand thumb of the patient. That is why I have got her left hand thumb-impression."

The statement of the girl was recorded by the Magistrate at 23-15 hours on 16th June, 1956,

A few days after her admission in the hospital but during the month of June, P.W. 10 Gokal Chand photographer took her photographs, enlarged copies of which are placed on the record as P.W. 3/A and P.J. The negatives of these photographs are also produced as Exhibits P.L. and P.M. The impression that I formed on looking at the two photographs of Bimla was that at that time she appeared to be suffering from extreme emaciation. Her cheeks appeared to be hollow. The projecting bones of her body with little flesh on them made her appearance skeletal. The countenance seemed to be cadaverous.

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The charges framed by the Sessions Judge against Om Parkash and Dwarki Devi under sections 307/34 and 342, Indian Penal Code, read as under:—

“(1) That you at Ludhiana from the month of January or February, 1956, upto 5th June, 1956, cruelly maltreated Smt. Bimla Devi P.W. and starved her in furtherance of the common intention of you both to cause her death as a result of which she suffered from T.B. and you continued to starve her and merely maltreated her in order to accelerate her death under such circumstances and with such common intention * * * * .”

(2) That you at Ludhiana from the month of January, 1956, up to 5th June, 1956, wrongfully confined Smt. Bimla Devi within your house * * * * .”

The prosecution has produced 14 witnesses including Bimla Devi. The prosecution consists of the statements of doctors who examined Bimla

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Devi and of neighbours who have deposed to the bad treatment meted out to her, besides that of the formal witnesses. The statement of P.W. Dr. Miss Dalbir Dhillon does not throw any light regarding Bimla Devi's malady and treatment. She had issued certificate Exhibit P.E. regarding her condition on 16th June, 1956 when Shri Sehgal Magistrate recorded her statement, Exhibit P.K.

P.W. 2 Lady Doctor Mrs. H. Kumar was working in the Civil Hospital at Ludhiana when Bimla Devi came to her in the hospital on 5th June, 1956, Dr. Mrs. Kumar stated that Bimla Devi looked very much perturbed, weak and anaemic, when she came to the hospital, and requested her to admit her and to treat her. At that time, she complained to Mrs. Kumar, that she had been maltreated by her husband and her mother-in-law and that she was being starved and she also used to be beaten at times. In view of her condition she was admitted in the hospital as an indoor patient. About an hour or so after she was admitted, Dwarki Devi, her mother-in-law, came to the hospital and wanted to take Bimla Devi with her to her house to which Bimla Devi did not agree. After some time the accused appellant Om Parkash also went to the hospital and wanted to take Bimla Devi home but she refused to go back. From 5th June, 1956, to 14th July, 1956, Bimla Devi remained as an indoor patient at the Civil Hospital and during those days her blood was examined and chest was screened. She was also X-rayed and was referred to Dr. Gulati P.W. 6 in charge of T.B. Clinic and was transferred to his side on 14th June, 1956, for treatment.

Bimla Devi had also been treated by Dr. Mrs. Kumar when she was an indoor patient from 1st April, 1955 to 3rd May, 1955, and again from 9th

May, 1955, to 10th June, 1955. At that time she was got admitted to the hospital by her husband Om Parkash who had come with her. Her ailment was diagnosed as "pellagra" which is a skin disease and believed to be a deficiency disease. She did not think that in 1955 she was suffering from tuberculosis and was not given any anti-tubercular treatment. She was discharged as cured. When she came to the hospital she was running temperature. The provisional diagnosis of Dr. Mrs. Kumar was that Bimla Devi had tuberculosis of the abdomen as entered in the bed head ticket, but her final opinion was that she had diarrhoea. In cross-examination she stated that she was definite that Bimla Devi was suffering from diarrhoea and not tuberculosis. The lady doctor also stated that when Bimla Devi was admitted in April, 1955, her blood test was taken and stools were examined for tuberculosis and she did not find any symptoms of disease in her, till she came to the hospital on 5th June, 1956. She was subjected to a long cross-examination and she has not come out of it badly. There is nothing to suggest that she as a doctor was not competent or careful, or, that she had made a statement which was untrue. Her attention was drawn to a portion of her statement before the police to the effect that on coming to the hospital Bimla Devi did not complain against any one for starving and withholding food from her but she denied having made such a statement before the police. She appears to be a disinterested witness and I am not prepared to accept the contention of the learned counsel for the defence that she initially stated that Bimla Devi had not complained to her regarding the maltreatment she had received from Om Parkash and his mother and has now gone back over it. The statement of Dr. Mrs. Kumar

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is credible and in no way suffers from any flaw which might reduce its value.

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P.W. 6 is Dr. D. N. Gulati in charge T.B. Clinic of the Memorial Hospital, commonly known as Dr. Brown's Hospital at Ludhiana. He was called to the Civil Hospital by P.W. 2 Lady Doctor Mrs. Kumar to examine Bimla Devi which he did on 6th June, 1956. He got her transferred to the female medical ward of the Memorial Hospital. At that time she was "in a condition of shock". On that very day she was given blood transfusion to save her life. According to Dr. Gulati at the time when he examined her she was found in a "shockingly emaciated condition". On 18th June, 1956, the screening of her chest revealed suspected T.B. of both lungs. This result was further confirmed by X-ray and sputum examination. He put her on anti-T.B. drugs. On 18th June, 1956, his opinion was sought by Assistant Sub-Inspector Nand Lal regarding the condition of the girl as per memo. Exhibit P.A. and Dr. Gulati gave his opinion as per Exhibit P.A./1. According to him when he examined Bimla Devi first, she was undernourished, weak, emaciated and anaemic, and this could be due to starvation and malnutrition. If these conditions were allowed to continue without any treatment she might have died within a month.

The opinion of Dr. Gulati was also sought by the City Magistrate, Ludhiana as per memo. Exhibit P.H. and on 21st June, 1956, he gave the following opinion:--

"Mrs. Bimla Sharma's present condition is due to food deprivation and maltreatment. She is also suffering from pulmonary tuberculosis which could be

caused by continued malnutrition and ill-treatment."

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In his cross-examination he stated that he did state before the Committing Magistrate that the condition in which he found Bimla Devi on the 14th June, 1956, could be due to her having abdominal tuberculosis as well in 1955. He also said, "the condition of Smt. Bimla Devi as I found it could be due to pulmonary tuberculosis but I found that it was also due to deprivation of food". He also admitted having stated to the Committing Magistrate that the condition of Bimla Devi might also be due to pulmonary tuberculosis and not necessarily due to withholding of food. He also stated that Bimla Devi and the lady doctor had told him that she had been starved and denied food. During the course of the arguments it was suggested on behalf of the accused that the medical opinion was tainted with prejudice and partiality in consequence of local stir which this case had created and the atmosphere of bias which prevailed at Ludhiana against the accused, and the feeling against the accused had been aroused, in the public mind which probably were shared by the medical witnesses. By way of abundant caution I ordered the examination of Bimla Devi by a medical specialist. The statement of Bimla Devi was also recorded in this Court on 8th May, 1958, regarding the present state of her health. In her statement in this Court as C.W. 1 she stated that she was admitted to the hospital at Ludhiana on 5th June, 1956, and stayed there as an indoor patient for a period of ten or eleven months and that she had been enjoying good health after her discharge from the hospital and never had any occasion to consult a doctor for any treatment. She stated that after receiving training in the use of *ambar charkha* she is now employed in giving

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instructions as to its use at a salary of Rs. 50 per month. The statement of Dr. K. S. Rai, P.C.M.S., Medical Specialist of General Hospital at Chandigarh, was recorded as C.W.2 on 8th May, 1958. He stated that he had examined Bimla Devi on 6th and 7th May, 1958, and there were scars of previous pulmonary tuberculosis in both the lungs and this was confirmed by him after her radiological examination. He produced the skiagram of her chest and stated that at present lesions in her lungs were healed and there was no active tubercular process discoverable now. He also confirmed this opinion by the laboratory examination of her sputum and blood which did not disclose any activity of tubercular process. From the examination of the scars on her lungs he could not assess the age of her last disease. As it was an old scar she might have had this disease some years ago. On being shown the photographs of the girl he stated that the condition of such a person could be as a result of starvation or semi-starvation and it could also be caused by a number of diseases from which such a person might be suffering. Her weight on 8th May, 1958, when she appeared in this Court, was 132 lbs. In answer to questions put on behalf of the accused Dr. Rai said that pellagra was a disease of malnutrition and occurred when nutrition had not been supplied or had not been assimilated. Amenorrhoea could be the result of anaemia or as a result of a disease lowering the vitality of a person.

The main question to be seen in this case is whether the condition of extreme emaciation in which Bimla Devi was found, was the result of systematic starvation and under-nourishment as a result of intentional maltreatment on the part of her husband and his relations, or, was it due

to the disease from which she was suffering, despite having been given proper nourishment, as contended by the accused. The medical evidence to which reference has been made above shows that in June, 1956, when she left her husband's house last, she had been suffering from the T.B. of the lungs. Lady Doctor Mrs. Kumar was of the view that in 1955, when Bimla Devi was admitted as an indoor patient first, she was only suspected at the time of provisional diagnosis, to be a case of tuberculosis, but as a result of subsequent treatment and her satisfactory response to it, she was of the view, that she was not stricken with that disease; and she was discharged from the hospital as cured. The medical opinion also indicated, that starvation or semi-starvation had produced the condition in which she was found in June, 1956, though the doctors did not rule out that such a condition could also be produced by disease independent of starvation. At this stage, I may advert to the fact, that Bimla Devi complained of maltreatment and starvation on the part of her husband when she was first seen by Lady Doctor Mrs. Kumar and also by Dr. Gulati.

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The conduct of the accused and his mother in following her to the hospital soon after her admission, and wanting to take her back home, and hers, in having refused to accompany them is also relevant. No reasonable explanation is forthcoming, as to why the husband and the mother-in-law of Bimla Devi were keen that she should go back and not be treated at the hospital. It is not the case of the accused, that Bimla Devi was at that time under a competent medical treatment at home, and therefore, she could be more efficiently and properly looked after there, than in the hospital. There is no doubt that the

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medical facilities which were available to Bimla Devi in the hospital under the treatment of Lady Doctor Mrs. Kumar and Dr. Gulati and others, could not be had at home. In 1955 when Bimla Devi was unwell Om Parkash had himself brought her to the hospital and got her admitted as indoor patient. It is not the case of the accused, and no suggestion has been made at the Bar, that the treatment of Bimla Devi, as an indoor patient in the hospital would have been costly or beyond the means of Om Prakash. It is not even suggested that the treatment in the hospital was not free. There could be no two opinions on the record of this case, that her condition when she was admitted in the hospital in June, 1956, was alarming, and if it had continued for some time more, she was not expected to survive. In these circumstances, the persistence on the part of the accused, and his mother, to take Bimla Devi home, and to reject such facilities of medical care and treatment as were being afforded in the hospital, is not comprehensible on any reasonable hypothesis. It could not be for reasons of any tender care, affectionate nursing and superior medical treatment at home, that Bimla Devi was being asked to return to the house of Om Parkash and not to get herself treated at a place where she had been successfully treated before, when she fell ill in 1955.

It is necessary now to turn to the statement of Bimla Devi and of the other prosecution witnesses regarding the allegations of intentional starvation, deliberate maltreatment with a view to hasten her end, and to shorten the span of the life of a tubercular patient. P.W. 7 Bimla Devi, as soon as she managed to totter to the Civil Hospital, contacted Lady Doctor Mrs. Kumar and

told her, her story, that she had been kept in confinement and subjected to starvation and that other alleged atrocities were perpetrated on her by her mother-in-law and others. She told the same story to Dr. Gulati, and to her brother Madan Mohan P.W. 13 who on receipt of a telegram regarding her serious condition came to Ludhiana from Srinagar. P.W. 13 Madan Mohan stated that his sister Bimla Devi was in excellent health and lived happily for a few months after marriage in October, 1951. After that she complained of ill-treatment on the part of her husband and he (Madan Mohan) then, about a year after the marriage, went to Ludhiana and took her away and found her in a very weak state of health. She lived with him at Ambala for about a year and a half and he agreed to send her back to her husband after the intervention of Om Parkash's maternal uncle assuring Madan Mohan that his sister would not be maltreated and would be well provided for. The main cause of the bad treatment of his sister, Madan Mohan attributes to his inability, on account of poverty, to meet the demands of the accused. He reached Ludhiana on 16th June, 1956, and when he saw his sister in Dr. Brown's Hospital he found her "a mere bundle of bones with hardly any flesh on them". On his enquiry, Bimla Devi told her brother, that she had been kept wrongfully confined for about two months and her condition at that time was due to starvation, under-nourishment and beating, etc., and all this he mentioned in his report, Exhibit P.N., made to the police. Thus, it appears from the prosecution evidence that at the earliest, when Bimla Devi left her home she complained to every one she came into contact with, that she had been wrongfully confined, deliberately starved and maltreated. Her

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above allegations are not in the nature of an afterthought. In her examination-in-chief as P.W. 7 she categorically alleged, *inter alia*, that she was in excellent health when she was married and her health gradually deteriorated in consequence of maltreatment and under-nourishment. On this account she left her husband's house and stayed about a year at Ambala with her brother and returned to her husband's house on assurances given by his uncle. She also stated, that her mother-in-law did not give her anything to eat and gave her a morsel or so at times. She alleged, that as she had not brought any cash or dowry, the mother-in-law used to say that she should die so that her son could marry again. She used to be given gram-husk mixed in water after five or six days. Two months previous to June, 1956, she went out of the house but was caught hold of in the bazar by Romesh and Surinder, brothers of Om Parkash, and mercilessly beaten and kept in a locked room. Bimla Devi was subjected to a detailed cross-examination but it is significant that she was not subjected to cross-examination on the above allegations. Her cross-examination is directed mainly to showing that she was medically treated whenever she fell ill and that Om Parkash on one occasion, sent her a money order of Rs. 5 and the relations between him and her had been cordial. The rest of the cross-examination is devoted to her previous ailments for which her husband had her treated. Regarding her several statements alleging ill-treatment as the specific cause of her condition she had not been subjected to any serious cross-examination. No doubt certain discrepancies and omissions between her statement in the Court and the one before the Committing Magistrate have been brought out, but they are not of such a nature, from which, I can conclude, that Bimla Devi was a liar or that her

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testimony was unworthy of acceptance. Even on the assumption, that she was properly looked after during the earlier years of marriage or that a sum of Rs. 5 was sent to her in 1952 when she had gone to live with her brother, or that she had been once taken to Dr. Kapur's Hospital at Ludhiana in August, 1952, which fact she had denied, or that she had been given medicines, or that the accused got her treated during her earlier ailments, it cannot be said that her allegations of ill-treatment during the two months preceding June, 1956, were false. From such discrepancies and omissions as have been brought out in the cross-examination, I cannot brand her as a liar and her testimony as unworthy of belief. So far as the basic allegations are concerned, which formed the gravamen of the offence, the veracity of her statement cannot be doubted. After a careful scrutiny of her statement I find her allegations as to starvation, maltreatment, etc., true. The exaggerations and omissions to which my attention was drawn in her statement are inconsequential.

I may now proceed to assess the value of the statements of other witnesses produced by the prosecution in support of its case.

[His Lordship then discussed the statements of various witnesses and continued.]

In his statement as D.W. 17, Om Parkash stated that the relations between him and Bimla Devi had been cordial and affectionate since his marriage and he had been having her treated during her ailments. In 1952 he had got her treated by D.W. 1 Dr. B. L. Kapur and in May, 1955, she was admitted in the Civil Hospital, Ludhiana, and he also kept her brother Madan Mohan informed of her condition from time to time. The relations

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between him and his neighbours Smt. Krishna Kumari and Smt. Shanti Devi P.Ws. were strained and these two women were responsible for inciting his wife against him and misleading her. He also stated that on coming to know that his wife had gone to the hospital, he went there and made arrangements for her food and also purchased some medicines. It was on 12th of June, 1956, that he saw her taking meals sent by someone else and she told him that he need not send meals to her any more. It was on 8th of June, 1956, that he learnt for the first time that she had been suffering from tuberculosis. The above resume of the defence evidence when summarised, suggests that the accused had no inkling that his wife suffered from tuberculosis, and he had been getting her treated for such ailments of which she complained. The relations between the husband and the wife were throughout warm and were not marred by any wranglings. The allegations of the prosecution as to deliberate starvation of Bimla Devi by the accused and his mother were strenuously denied. The accused had rested the entire blame on the machinations and intrigues of P.Ws. Smt. Krishna Kumari and Smt. Shanti Devi to whose words Bimla Devi is said to have readily listened.

After having given anxious thought and careful consideration to the facts and circumstances as emerge from the lengthy evidence on the record, I cannot accept the argument of the learned counsel for the accused, that the condition of acute emaciation in which Bimla Devi was found on 5th of June, 1956, was not due to any calculated starvation but it was on account of prolonged illness, the nature of which was not known to the accused till Dr. Gulati had expressed his opinion that she was suffering from tuberculosis. The

condition of Bimla Devi as noticed by the doctors on her admission in the hospital on 5th of June, 1956, and also as appears from the two photographs taken of her a few days later, was alarming, and almost critical, and this fact could not have been hidden from the accused, even if it be assumed that he was not aware of the nature of the disease. According to the accused she had been treated by D.W. 15 Kaviraj Guru Parkash Kochhar at his out-door clinic from 26th of April, 1956, to 2nd of May 1956, when according to the Vaid she was suffering from fever. It is difficult to believe, that having regard to her visibly serious condition at that time, the accused if he really wanted her to be properly treated, would not have taken her to a qualified and competent medical practitioner as he did in 1955. Bimla Devi was taken as an indoor patient in the Civil Hospital under the care of Lady Doctor H. Kumar and she left the hospital after she was cured. Without doubt, her condition in 1956 during the months preceding her admission to the hospital was of such manifest gravity, which should have impelled the accused to take her to the same hospital and particularly so, when the same doctor who had cured her once before was available. This is on the assumption that his profession of affection for his wife was not a pretence but was genuine. It is not the case of the accused that he had lost faith in the efficacy of allopathic treatment and was, therefore, giving her Ayurvedic treatment. It is not even suggested that the medical treatment had been tried and despite such medical attention, as was available to the accused, Bimla Devi was given up as a hopeless and incurable case and, therefore, left to her fate. Bimla Devi has responded to treatment and has been restored to normal health under the care and treatment of the doctors

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at Ludhiana. The learned Additional Sessions Judge on 18th of May, 1957, after closing the statement of the accused Om Parkash as D.W. 17 recorded his impression of her condition in the following words:—

“I am, however, placing on record my observation about the present appearance of Bimla Devi P.W. ‘From outward appearance, she looks quite healthy and fairly stout.’”

A year after, that is on 8th of May, 1958, she was again examined under my order by Dr. Rai as C.W. 1, she said that she was enjoying normal health. Bimla Devi did not bear any child. The story of Bimla Devi as to how she was ill-treated, and how, her end was attempted to be brought about or precipitated, is convincing, despite the novelty of the method in which the object was sought to be achieved. After the lapse of a number of years, during which, she was said to have suffered from ill-health, she presumably became an unmitigated burden, and she could not discharge her wifely duties in respect of the marital claims of her husband. She had not brought any worthwhile dowry and had thereby incurred the displeasure and earned the taunts of her mother-in-law. The conduct of the accused and of his mother on 5th of June, 1956 when soon after Bimla Devi's admission in the hospital they insisted on taking her back home, is significant and almost tell-tale. It was not for better treatment or for any treatment that they wanted to take her back home. Their real object in doing so could be no other than to accelerate her end. The ancillary object was not to let her open her lips to the doctors and to sympathetic social workers, and to make known her present condition, and

how it had been brought about. Bimla Devi in the emaciated and anaemic state, in which she was found languishing, could not have lived for long; and if this was the objective sought by the accused, the keenness that he and his mother expressed for taking her back home at a time when she needed medical attention the most, cannot be explained on any other reasonable hypothesis, than that they wanted to bring about her death, by the means which they had adopted and had systematically pursued. The idea of bringing about her end by violent means was fraught with danger, especially when the accused were living in a crowded locality, and with two contiguous neighbours who were avowedly inimical towards Om Parkash and his mother. Her death by starvation would have appeared natural in view of her history of ailments, and would not have roused suspicion, and in any case would have defied detection. This attitude of mind towards Bimla Devi also explains that two months prior to her admission in the Civil Hospital when Bimla Devi got an opportunity to leave the house she was pursued, caught and forcibly dragged home by the brothers of the accused, and on account of her feeble state of health, she could not offer any effective resistance.

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The Additional Sessions Judge giving benefit of doubt acquitted the accused of the charge under section 342, Indian Penal Code. He found that Bimla Devi's movements were restricted to a certain extent but from the evidence on the record he did not feel justified in drawing an inference, that she was wrongfully confined within the contemplation of section 342, Indian Penal Code. He arrived at this decision because there was evidence that Bimla Devi went up-stairs and the gestures

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she made to some women in the neighbouring houses presupposed to a certain extent the freedom of movement. He also thought that during the absence of male members of the family, during office hours, and from the fact, that Dwarki mother of Om Parkash would also be going out at times, opportunities might have been there for Bimla Devi to move about without any restrictions. The trial Court also thought that opportunities should have come for Bimla Devi to be left alone when her movements would not be restrained in any manner. I do not agree with the finding of the Sessions Judge that the evidence on the record did not disclose commission of the offence of wrongful confinement under section 342 of the Indian Penal Code. He seems to be under the impression that wrongful confinement connotes actual physical obstruction and at all times.

To support a charge of wrongful confinement proof of actual physical obstruction is not essential. It must be proved in each case, that there was at least such an impression produced in the mind of the person confined, as to lead him, reasonably to believe, that he was not free to depart, and that he would be forthwith restrained, if he attempted to do so: see *King Emperor v. Shamlal Jairam* (1). Bimla Devi, having regard to her feeble state of health and her helplessness, could be reasonably presumed to believe in the threats that if she left the house, she would not be permitted to do so. After the incident of two months prior to her admission in the hospital, when she was pursued and forcibly brought back to the house by the brothers of the accused, she would have had such an impression. It was remarked in

(1) 4 Bombay Law Reporter 79

Madala Peraiah and others v. Voruganti Chendriah (1), that physical presence of the obstructor is not necessary; nor is any actual assault necessary and fear of immediate harm restraining a man out of a place where he wishes to be and has a right to be is sufficient to constitute an offence under section 341, Indian Penal Code. Same reasoning applies to an offence under section 342, the emphasis being on the apprehension produced on the mind of the person restrained or confined: see also *K. Joggayya v. King* (2). In my opinion the domination of the will of the accused and of the other members of his family, upon the mind of Bimla Devi, was sufficiently strong and direct, so as to leave her no option but to submit to it. It was not necessary for purposes of section 342 to hold her a prisoner by putting a lock outside her room all the 24 hours. It was sufficient for purposes of commission of offence of wrongful confinement if she knew the harmful consequences of disobedience if she tried to escape. In such a case a moral force could be as effective as physical coercion, to which it was unnecessary to resort for keeping her within the four walls of the house. What is of importance in such cases is the reasonable apprehension of force, rather than its actual use. Any effective restraint on the right of freedom whether caused by threats or by actual physical force is sufficient for purposes of commission of an offence. The coercion of the mind can, in certain circumstances, be as effective as coercion of the body, in order to bring the conduct of the wrong-doer within the ambit of section 341 or of section 342, Indian Penal Code. Such a restraint may arise out of words, acts, gestures or the like sufficient to induce a reasonable apprehension that failure to submit will result in the

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(1) 1952 M.W.N. 163

(2) A.I.R. 1951 Orissa 142

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use of force. It is not necessary to constitute the offence under section 341 or under section 342, Indian Penal Code, that the person to be deprived of his liberty, should be touched or assaulted or actually arrested or confined within walls, the offence may be committed by words alone or by acts alone, or by both, or by merely operating on the will or by personal violence or both. A person can be deprived of his liberty of locomotion as much by the exercise of force as by the express or implied threat of it. See *Riley v. Stone* (1).

I think the learned Sessions Judge was in error in thinking that the restraint placed upon Bimla Devi during the two months prior to 5th June, 1956, did not amount to wrongful confinement. I will not, however, interfere with the order of acquittal of the accused for the offence under section 342, Indian Penal Code.

The next and the most important question in this case is, whether the ingredients of the offence under section 307, Indian Penal Code, have been substantiated. In other words, whether accused Om Parkash is shown to have done any act with such intention or knowledge, and under circumstances, that if he by that act had caused death, he would be guilty of murder.

Section 32 of the Indian Penal Code provides, that in every part of the Code, except where a contrary intention appears from the context, words which refer to acts done, extend also to illegal omissions; and evil effect can be caused by a positive act as well as, by inaction and when the law imposes on a person a duty, forbearance from discharging it can render him liable to

punishment. The word "illegal" which is prefixed before the word "omissions" in section 32 is of wide import. Everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action, comes within the ambit of the word "illegal" (*vide* section 43, Indian Penal Code). What is, therefore, to be seen in this case is, whether in terms of section 43 intentional withdrawing of food from Bimla Devi or undernourishing her by or at the instance of her husband was, prohibited by law, and which failure would have furnished ground for a civil action. In other words, whether accused Om Prakash was legally bound to feed Bimla Devi and in not discharging this duty, he was guilty of illegal omission. Indian case law does not furnish instances of the commission of attempted murder and no ruling, Indian or Foreign, has been cited at the Bar. In an old case decided in 1873 *The Queen v. Gunga Singh* (1), the accused had allowed his female child of tender age whose mother had died six months after the child's birth, to languish away and die for want of proper sustenance, and had persistently ignored the wants of the child, although repeatedly warned of its state and the consequences of his neglect of it, the prisoner was in a position to support the child. The Sessions Judge convicted the prisoner under section 304 for the offence of culpable homicide not amounting to murder, sentencing him to two years' rigorous imprisonment. It was held that the offence committed was murder and not one under section 304, I.P.C. Turner, J., said:—

"If the omission was accompanied by an intention to cause death, or by the knowledge that it must in all probability cause death, the appellant must be

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held to have committed murder. It must be, I think presumed that every man who has arrived at his discretion knows that the omission to supply an infant with proper and sufficient food must in all probability cause death."

The next question is, whether the case of a grown up adult from whom sustenance has been withheld could be placed on the same footing as that of a helpless infant. The husband is liable to feed and shelter his wife who is incapable of self-help to the same extent as the parent of a helpless child exclusively depending on him. Lord Macaulay in his report on the Indian Penal Code posed this question and answered it in the following words:—

"Early in the progress of the code it became necessary for us to consider the following question. When acts are made punishable on the ground that those acts produce, or are intended to produce, or are known to be likely to produce, certain evil effects, to what extent ought omissions which produce, which are intended to produce, or which are known to be likely to produce, the same evil effects to be made punishable?

Two things we take to be evident; first that some of these omissions ought to be punished in exactly the same manner in which acts are punished; secondly, that all these omissions ought not to be punished. It will hardly be disputed that a gaoler who voluntarily causes the death of a prisoner by omitting to supply that prisoner with food, or a

nurse who voluntarily causes the death of an infant entrusted to her care by omitting to take it out of a tub of water into which it has fallen, ought to be treated as guilty of murder. On the other hand, it will hardly be maintained that a man should be punished as a murderer because he omitted to relieve a beggar, even though there might be the clearest proof that the death of the beggar was the effect of this omission, and that the man who omitted to give the alms knew that the death of the beggar was likely to be the effect of the omission. Again, it appears to us that it may be fit to punish a person as a murderer for causing death by omitting an act which cannot be performed without personal danger or pecuniary loss. A parent may be unable to procure food for an infant without money. Yet the parent, if he has the means, is bound to furnish the infant with food, and if, by omitting to do so, he voluntarily causes its death, he may with propriety be treated as a murderer. A nurse hired to attend a person suffering from an infectious disease cannot perform her duty without running some risk of infection. Yet if she deserts the sick person, and thus voluntarily causes his death, we should be disposed to treat her as a murderer.

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We cannot define this rule better than by giving a few illustrations of the way in which it will operate. A. omits to give

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Z. food, and by that omission voluntarily causes Z's. death. Is this murder? Under our rule it is murder if A. was Z's. gaoler, directed by the law to furnish Z. with food. It is murder if Z. was the infant child of A., and had therefore, a legal right to sustenance, which right a Civil Court would enforce against A. It is murder if Z. was a bedridden invalid, and A, a nurse hired to feed Z. It is murder if A. was detaining Z. in unlawful confinement, and had thus *contracted* (see clause 338) a legal obligation to furnish Z., during the continuance of the confinement, with necessaries. It is not murder if Z. is a beggar, who has no other claim on A. than that of humanity". (See The Complete Works of Lord Macaulay, Volume XI, Page 110 *et seq.*)

In this case the claim of Bimla Devi wife of Om Parkash accused for sustenance and medical relief did not rest merely on benevolent morality or on humanity or mercy. A wife does not ask for food and raiment *ad misericordiam*, but on the basis of an obligation which is not placed by morality alone but which is also imposed by law. Stephen states this duty in the following words:—

"Every person under a legal duty, whether by contract or by law, or by the act of taking charge, wrongfully or otherwise, of another person, to provide the necessaries of life for such other person, is criminally responsible if death is caused by the neglect of that duty, and if the person to whom the duty is owing, is, from age, health, insanity or any other cause, unable to withdraw himself from

the control of the person from whom it is due; but not otherwise". (See Digest of Criminal Law 5th Ed. Article 234).

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Bimla Devi, in this case, apart from being an invalid, and suffering from advanced anaemia, was also kept under restraint amounting to confinement; a person in her condition was unable to withdraw herself from the control of Om Parkash. When food is wilfully withheld from a helpless person, under the charge of the accused, with the intention to kill, he is guilty of offence of murder.—*vide Reg v. Conde* (1) and *Reg v. Bubb* (2). Where the wife was in a helpless state and unable to appeal elsewhere for aid, the husband who has the means to provide necessaries for existence, when deliberately withholding them, commits murder and is guilty of murder. The criminal liability of a husband for causing the death of a wife in such a helpless condition, by withholding necessaries of life from her, is on the same footing, as that of a parent towards an infant or of a jailor towards a prisoner or of a person in charge of a lunatic asylum towards its inmate. Similar liability is cast on guardians of helpless persons including nurses attending the sick. In short where there is a legal duty, law imposes a liability.

To the rule of culpability for acts of omission of the nature mentioned above there is one rider. The criminal liability of such persons is conditional on their capacity, means, and ability to perform the legal duty but in this case neither there was, nor could there be such a defence. What is the principle? The criminality which attaches to omission to provide food, also applies

(1) (1867) 10 Cox. C.C. (Eng) 547

(2) (1850) 4 Cox. C.C. (Eng) 457

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to failure to provide clothing, shelter, medical attention, treatment and to other necessities of life.

If an adult chooses to undertake the charge of a human creature, helpless either from infancy, sickness, lunacy, or other infirmity, he is bound to execute that charge without wicked negligence: See *R. v. Nicholls* (1).

If a man wilfully abandons his wife to destruction by the elements when he can save her, or criminally neglects to shelter her, when he is able to do so, and leaves her to perish, he is as much a murderer as if he had assaulted her with a deadly weapon. In *Territory v. Manton* (2), the Supreme Court of Montana sustained a verdict of guilty of manslaughter where the evidence was, that, the prisoner and his wife had both been drinking; that the husband allowed the wife to lie on the ice all night, poorly clad, outside the house and brought her into the house next morning when it was too late. She languished speechless until the next day and died. No effort was made to get her medical aid. Even the drunkenness of the husband, was held to be no excuse on his part from discharging his duty towards her as her husband.

Though, where a husband and wife had been separated by common consent and he had agreed to allow her a stipulated sum per week, and such sum was regularly paid, he might ordinarily refuse to have anything to do with her, but if she was ill and without shelter on a cold night, and when informed of her condition, he refused her shelter, and she was found dead the next morning, he is

(1) (1874) 13 Cox. C.C. 75
(2) 19 Pacific Reporter 387

guilty of manslaughter if her death was caused or accelerated by his conduct in refusing shelter. The fact that the wife in such a case was suffering from disease which would have shortly caused her death does not relieve him from liability; therefore, it is immaterial whether the death of the deceased was actually caused by the act of the accused or only accelerated by it,—*vide Reg v. Plummer* (1).

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In the case of *Chattaway* (2), it was held that there was a common law duty to take proper care of an adult *sui juris* who was helpless and unable for any reason to withdraw himself from the dominion of those who had charge of him, and neglect in such a state of things may amount to manslaughter.

In *Westrup v. Commonwealth* (3), one Arthur Westrup was convicted of manslaughter of his wife for neglecting to provide medical attention for his wife during child-birth and thereby causing her death. The principle of law laid down by the Court of Appeal of Kentucky was as under:—

“Where the husband neglects to provide necessaries for his wife, or medical attention in case of her illness, he will be guilty of involuntary manslaughter, provided it appears that she was in a helpless state and unable to appeal elsewhere for aid, and that the death, though not intended nor anticipated by him, was the natural and reasonable consequence of his negligence.”

In *State v. Rees* (4), the facts were, that the accused assaulted a woman, violently threw her

(1) 174 E.R. 954

(2) (1922) 17 Cr. A. Reports 7

(3) 935 S.W.R. 646

(4) 107 Pacific Reporter 893

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on the ground and as a result she became unconscious. He then permitted her to lie on the ground, exposed to the inclemency of the weather and neglected and refused to provide her with necessary clothing, shelter and protection and by reason of which assault and exposure she died. In these circumstances, it was held that the accused would be guilty of murder, and it was immaterial whether she was his wife or not. A person, therefore, can be guilty of murder by doing nothing. Exposure of a person to the unpropitious elements, towards whom, the accused owed a duty of protection may amount to murder or manslaughter according to the circumstances. To the same effect is *State v. Behm* (1).

In the case of *Alexander Gordon Bonnyman* (2), the accused was a medical man and he married the deceased who was discovered to be a drug addict. In February, 1940, she was persuaded by another doctor named Prasad to go into hospital, and her health improved. In April, 1941, the house in which the accused and his wife were living was destroyed by an air-raid. Mrs. Putnam, a neighbour, found the appellant's wife in a very dirty and neglected condition and she proposed to take her to her home but the accused said that she was too ill to be moved. Mrs Putnam warned the accused that he would run the risk of manslaughter if anything happened to her. Three days later, she was taken to Mrs. Putnam's house. Her condition improved but the accused did not get her treated though asked to do so. Before she was removed in another house in August, 1941, the appellant would not let the doctor who had seen her (Dr. Prasad), go upstairs to see her in bed, but brought her down in his arms. She

(1) 34 N.W.R. 319

(2) 1942 (28) Cr. A. Reports 131

was then dirty, her hair was matted, and she had open ulcers. The next day Dr. Prasad wished to see her, but was told by the accused that if his services were required, he would be summoned. Her condition worsened steadily. It was proved that she was physically helpless. Eventually she was taken to the hospital and died the next day after her admission. The accused's defence was, that she was stubborn and would not let him do anything for her. The accused was convicted of the manslaughter by negligence, of his wife. The appeal was dismissed by Court of Criminal Appeal. The Lord Chief Justice delivering the judgment of the Court of Appeal at page 137 observed—

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“Can anybody, I ask, who has read the evidence or heard the evidence in this case, have any doubt that this unhappy woman was unable to withdraw herself from the care of the appellant, or was not in a position to give herself any help to deliver herself from her mental and physical ailments? * * * * * and for the reasons I have mentioned we come clearly to the conclusion that she was as helpless as a human being could be, and that the plain duty of the appellant was to have given her aid and treatment, which he withheld.”

The above principle of law was also endorsed in *Reg. v. Smith* (1), though on the facts of that case. the mistress was not held to be criminally responsible for the death of her servant aged 23 years, caused by neglecting to supply her with proper food and clothing as the servant was not, on the evidence, found to be helpless and unable to take care of

(1) 169 Eng. Reports 1533

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herself and was not under the dominion and restraints of her mistress as to be unable to withdraw herself from her control. Channell B. at page 1544 observed:—

“No doubt there may be cases where a person under the control of another may go out and be freed from his presence, and yet be, by the relationship between them, so constrained to return as to be actually under the dominion and restraint of that other; * * * * *. In such a case, no doubt, there, is such a restraint and dominion, as to render the person exercising it liable for such a neglect as is charged in the present case; * * * * *.”

In *R. v. Marriott* (1), it was held that where the death of an aged and infirm woman is caused by confining her against her will, and not providing her with food, apparel and medicines and other necessaries, and not allowing her the enjoyment of the open air, in breach of an alleged duty, if the neglect is so wilful and gross as to warrant the inference, that the person confining contemplated her death, such a person was guilty of murder but if the death was occasioned by negligence, he was guilty of manslaughter only.

In *The Queen v. Instan* (2), the prisoner used to be maintained by her aunt, a woman of seventy-three. During the ten days before her death the aunt suffered from a disease which prevented her from moving or doing anything to procure assistance; during this time the prisoner lived in the house and took in the food supplied by the tradesmen, but gave none to the deceased, nor did she procure for her any medical or nursing attendance,

(1) (1838) 8 C. & P. 425

(2) (1893) 1 Q.B.D. 450

or inform any one of the condition of the deceased, although she had abundant opportunity to do so. No one but the prisoner had any knowledge of the condition of the deceased prior to her death, which was substantially accelerated for want of food, nursing and medical attendance. It was held that a duty was imposed upon the prisoner, under the circumstances, to supply the deceased with sufficient food to maintain her life, and that, the death of the deceased having been accelerated by the neglect of such a duty, the prisoner was guilty of manslaughter. Lord Coleridge, C.J., said—

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“There is no case directly in point, but it would be a slur upon and a discredit to the administration of justice in this country if there were any doubt as to the legal principle, or as to the present case being within it. The prisoner was under a moral obligation to the deceased from which arose a legal duty towards her; that legal duty the prisoner has wilfully and deliberately left unperformed, with the consequence that there has been an acceleration of the death of the deceased owing to the non-performance of that legal duty.”

Criminal law fastens liability on person who omit to perform the duty required by law such as to provide food, clothing, shelter, or medical aid to another, but a refusal to perform acts of mere charity or mercy, not coupled with a legal duty, does not entail legal punishment even if death ensues from such refusal or neglect. Applying the above principles it is clear that the law casts upon Om Parkash accused *inter alia* the duty to provide his wife with food, and medical treatment. The evidence on the record shows,

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that he wilfully and deliberately failed to discharge the obligation he owed to her in the matter of food and medical attention. He also possessed the capacity, means and ability to perform the legal duty without which the omission to perform is not criminal. If Bimla Devi had died, her death in the circumstances of her condition and the treatment meted out to her would not have been imputable to such a failure on the part of Om Parkash. In this case the failure to provide medical care was not the result of any genuine belief in the inefficacy of the medical treatment. The food in this case was wilfully and intentionally withheld so as to shorten the remaining span of her life. Law does not require an intention to cause the death then and there. It is enough if the facts show that by withholding food to her, death would have resulted surely though gradually.

The next question to be considered in cases under section 307, Indian Penal Code, is, whether the act or omission of the accused person amounted to an attempt to commit the offence. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof. For purposes of criminal liability, it is sufficient, if the attempt had gone so far, that the crime would have been completed, but for extraneous intervention which frustrated its consummation. According to Stephen "an attempt to commit a crime is an act done with an intent to commit that crime, and forming part of series of act which would constitute its actual commission if it were not interrupted." (See Digest of Criminal Law, Article 67).

In this case it was not a mere preparation, but steps adapted to the purpose intended, had been

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taken. But for the intervention of the fortuitous circumstances, of the girl having managed to reach the hospital, the accomplishment of the object was, according to the medical opinion, within sight, and under those conditions Bimla Devi was not expected to survive for long. The systematic semi-starvation of Bimla Devi, and the deliberate denial of medical treatment, which in her condition, she sorely needed, was a criminal omission, which was immediately and not remotely connected with, and directly tending to, the commission of the offence. The act of omission had gone far enough towards the accomplishment of the desired result. Applying the principles of law discussed above, to the facts and circumstances of this case, they clearly point to the guilt of Om Parkash, and leave no reasonable doubt in my mind, that he had attempted to murder his wife Bimla Devi.

For the reasons discussed above, I agree with the conclusion of the learned Sessions Judge that the accused-appellant has been proved to be guilty of the offence under section 307, Indian Penal Code. The sentence of three years' rigorous imprisonment is not excessive, having regard to the studied and systematic nature of the attempt, steadily pursued for a considerable length of time. I maintain the conviction and the sentence and dismiss the appeal. The accused is on bail. He is ordered to surrender to his bail-bond and to undergo the unserved portion of his sentence.

A criminal revision has been filed (Criminal Revision No. 1083 of 1957) praying for enhancement of sentence passed on Om Parkash under section 307, Indian Penal Code. In the same petition it is also prayed that the order acquitting Om Parkash under section 342, Indian Penal Code,

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and also the order of acquittal passed in favour of Dwarki Devi should be set aside. Om Parkash has been awarded a substantial sentence of three years' rigorous imprisonment and I do not consider the sentence to be inadequate. I have differed from the Sessions Judge regarding his reasoning and conclusion which led him to acquit Om Parkash of the offence under section 342, Indian Penal Code, but as he has been found guilty under section 307, Indian Penal Code, I do not consider it advisable to set aside the order of his acquittal. Dwarki Devi was given the benefit of doubt and acquitted. I do not consider it proper to interfere with the conclusions of the Sessions Judge. The criminal revision No. 1083 is, therefore, dismissed.